IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) NORMA JEANNE BRUMLEY MURRAH, ON BEHALF OF HERSELF AND ON BEHALF AND AS TRUSTEE FOR THE JEANNE BRUMLEY REVOCABLE TRUST, AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

(1) EOG RESOURCES, INC., f/k/a ENRON OIL & GAS COMPANY,

Defendant.

Case No. CIV-10-994-M

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Rule 26(f) Conference: March 28, 2011, 11 a.m.
Date of Scheduling Conference: April 5, 2011 at 2:50 p.m.

Appearing for Plaintiffs, Norma Jeanne Brumley Murrah:

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Appearing for Defendant, EOG Resources, Inc.:

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JURY TRIAL DEMANDED ___X____ NON-JURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT.

EOG Resources, Inc. f/k/a Enron Oil & Gas Company ("EOG") operates oil and gas wells and has the right to market production attributable to operating and non-operating interests in wells located within the State of Oklahoma. Plaintiff and the putative Class ("Class") claim to be royalty owners in oil and gas wells operated by EOG. Plaintiff brought this action as the representative of a putative Class pursuant to Fed. R. Civ. P. 23 (a) and (b) (3). The proposed Class is defined by Plaintiff as:

> All royalty owners of EOG Resources, Inc. f/k/a Enron Oil & Gas Company from Oklahoma wells that have produced gas and/or gas constituents (such as residue gas, natural gas liquids, helium, nitrogen, or condensate) from January 1, 1987 to the present.
> Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States); (2) Defendants, their affiliates, and employees, officers and directors; and (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing.

This case was originally filed as a class action in Oklahoma state court but was removed to this federal court under the Class Action Fairness Act of 2005, claiming diversity jurisdiction and that the amount in controversy exceeded $5,000,000, exclusive of interest and costs. 28 U.S.C.A. §1332(d).

Plaintiff claims that EOG improperly reduced royalty owner revenue by charging Oklahoma royalty owners for fees associated with gathering, compression, dehydration, treating, fuel, and processing in violation of Oklahoma law.

Defendant denies Plaintiff's allegations. Defendant denies that the claims in this case are proper for class certification under Fed. R. Civ. P. 23. Defendant EOG denies that it has improperly reduced royalty owner revenue, and contends that it has properly paid royalty under the oil and gas leases, other applicable instruments, and Oklahoma law.

2. JURISDICTION.

This case was removed from state court. Jurisdiction exists under the Class Action Fairness Act, 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453.

3. STIPULATED FACTS.

a. The matter in controversy exceeds the sum or value of $5,000,000, exclusive of interests and costs.
b. EOG is a Delaware corporation, with its principal place of business in Texas.
c. EOG is an independent oil and gas company, and an operator of oil and gas wells within the State of Oklahoma.
d. Plaintiff is a citizen of Oklahoma.
e. The number of members of the proposed plaintiff class exceeds 100.
f. Venue is proper in this Court.

4. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. **Plaintiff**:

1. Plaintiff contends that under Oklahoma law (absent specific language to the contrary in the oil and gas lease), a royalty owner bears no costs related to exploration, production, creating marketable products or marketing until the produced gas is put into marketable condition.
2. Plaintiff contends that EOG knowingly made improper payment of royalties to the Class because, instead of bearing the costs to make the products marketable, EOG has deducted fees associated with gathering, compression, dehydration, treating, fuel, and processing from royalty owners' revenues, but has hidden that reality from the Class.

3. EOG also had an obligation to pay royalty on gas used off the lease premises and in the manufacture of products (*e.g.*, natural gas liquids and residue gas at the gas plant tailgates). EOG paid no royalty on such gas and also hid that fact from its Oklahoma Well royalty owners.

4. Every month, EOG disburses production revenue on its checks to the royalty owner Class, making the same false representation, in violation of 52 Okla. Stat. §570.10, that no deductions are being made, and failing to even reflect payment at all for some valuable products.

5. In every check stub mailed to Plaintiff and each Class member, EOG uniformly and systematically claims the royalty owners have been paid royalty, in full, for all oil and gas and that EOG has deducted nothing from the royalty owner payments for gathering, compressing, treating, processing, dehydrating, and fuel.

6. Plaintiff's claims are based on the following legal theories: breach of lease, tortious breach of lease, breach of fiduciary duty, fraud, constructive fraud, deceit, accounting, and unjust enrichment.

7. From the time EOG became the operator of the Class wells, it has continuously breached its duties to the Plaintiff and the Class and used its position of trust to secretly and unlawfully retain a portion of the Class's royalty for its own benefit and to the detriment of the Class.

8. The recent Oklahoma Supreme Court's holding in *Weber v. Mobil Oil Corp.,* 2010 OK 33, 243 P.3d 1, made it clear that under Oklahoma law claims for fraud, deceit, constructive fraud, and punitive damages are appropriate for class certification in cases like the instant case.

9. EOG does not have a mere possessory interest in revenue or proceeds of oil and gas production belonging to the Class but rather holds the funds as a trustee. 2008 Okla. A.G. Opin. 08-31 (Nov. 5, 2008), 2008 WL 4860573).

10. Plaintiff has satisfied all of the requirements for class certification.

B. Defendant:

1. Plaintiff has failed to state claims against EOG upon which relief can be granted.

2. Certification of any class is not appropriate. The requirements of Fed. R. Civ. P. 23 cannot be met. Trial of the claims of thousands of royalty owners, requiring individual, lease-by-lease and well-by-well analysis for thousands of gas sales, would be unmanageable and individualized issues would predominate over common issues

3. Under Oklahoma law, the terms of each oil and gas lease must be examined to determine the issues raised relating to the alleged improper payment of royalties.

4. In royalty owner class action suits, this Court has consistently refused to certify a class with respect to tort claims, including claims of fraud, deceit, constructive fraud and punitive damages.

5. EOG is not liable to any putative class member with whom EOG has no contractual relationship.

6. EOG contends that its royalty payments are consistent with the obligations under EOG's leases and other instruments and that Plaintiff's claims fail both legally and factually.

7. Plaintiff's claims are barred by estoppel, waiver and/or laches.

8. EOG has paid all sums due.

9. The claims asserted are barred in whole or in part by settlement, payment, release, and accord and satisfaction.

10. To the extent that Plaintiff's claims are based on alleged breach of an implied covenant of oil and gas leases, Plaintiff's claims are barred by her failure to make proper demand for performance of the implied covenant.

11. Plaintiff's claims, if any, arise from contract, and Plaintiff is not entitled to punitive damages.

12. Plaintiff is not entitled to recover punitive damages because Plaintiff suffered no actual damages and because the requisite

factual basis for an award of punitive damages in this case has not be pled and cannot be established.

5. APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.

No

6. MOTIONS PENDING AND/OR ANTICIPATED.

a. Motion for Class Certification:

(1) Plaintiff's motion for class certification and plaintiff's expert(s) reports shall be filed on September 9, 2011 (along with two deposition dates in the following four weeks when the expert(s) can be deposed, at Defendants' election).

(2) Defendants' response to plaintiff's motion and Defendants' expert(s) reports shall be filed on no later than November 21, 2011 (along with two deposition dates in the following two weeks when the expert(s) can be deposed, at Plaintiff's election)..

(3) Discovery Deadline on class certification—December 16, 2011.

(4) Plaintiff's reply to Defendants' response shall be filed on January 13, 2012. Any supplemental or additional expert reports in conjunction with a reply brief shall be limited to responding to Defendants' expert(s).

(5) If a party wants oral argument or a mini-trial in reference to the class certification motion, it shall file a motion on January 20, 2012 with a response thereto by January 30, 2012. No reply.

(6) After the Court's ruling on the motion for class certification, a supplemental case management conference shall be scheduled pursuant to a further report by the parties proposing a schedule for deadlines for merits issues.

b. The parties anticipate filing a joint motion for protective order.

7. COMPLIANCE WITH RULE 26(A)(1).

Initial Disclosures to be exchanged no later than April 8, 2011 (with documents specified by Rules 26(a)(1)(A)(iii)-(iv) exchanged by April 15, 2011).

8. PLAN FOR DISCOVERY FOR CLASS CERTIFICATION PURPOSES.

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on March 28, 2011.

B. The parties anticipate that discovery as to class certification should be completed by December 16, 2011, and subject to the above deadlines. The parties propose that the Court defer any scheduling of merits discovery until after the Court rules on a motion for class certification.

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session? ADR may be most appropriate following the decision on the plaintiffs' motion for class certification.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, pursuant to Fed. R. Civ. P. 26(f)(3)(C)? Yes.

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material pursuant to Fed. R. Civ. P. 26(f)(3)(D)? Yes.

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P. 26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same.

The parties are conferring on an Agreed Protective Order.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

9. ESTIMATED TRIAL TIME: Plaintiff requests the testimony of witnesses at the class certification hearing be presented by affidavit and deposition alone and anticipate the class certification hearing could be finished in 2 hours (1 hour per side) with presentation by counsel and without live witnesses.

EOG states that it cannot determine whether live witnesses will be necessary until discovery on class certification issues has been completed and Plaintiff's motion for class certification has been filed. EOG anticipates that a hearing with live witnesses would take 1-2 days.

10. **BIFURCATION REQUESTED**: Yes.

The parties agree that the Court should resolve Plaintiff's anticipated motion for class certification before scheduling a trial on the merits.

11. **POSSIBILITY OF SETTLEMENT**: Fair

12. **SETTLEMENT AND ADR PROCEDURES**:

A. Compliance with LCvR 16.1(a)(1)--ADR discussion: Yes.

B. The parties request that this case be referred to the following ADR process: The parties request that ADR with a neutral third party experienced in oil and gas matters be scheduled after class certification issues have been resolved.

13. **PARTIES CONSENT TO TRIAL BY MAGISTRATE JUDGE?** No.

14. **TYPE OF SCHEDULING ORDER REQUESTED**.

Specialized. A status/scheduling conference has been set by the Court for April 5, 2011, and the plaintiff requests that it be allowed to attend by telephone to which defendant does not object.

a. The parties agree that the Court should resolve Plaintiff's anticipated motion for class certification before scheduling a trial on the merits and the related deadlines for the trial on the merits. The parties propose the following deadlines for the class certification phase of this case:

(1) Plaintiff's motion for class certification and plaintiff's expert(s) reports shall be filed on September 9, 2011 (along with two deposition dates in the following four weeks when the expert(s) can be deposed, at Defendants' election).

(2) Defendants' response to plaintiff's motion and Defendants' expert(s) reports shall be filed on no later than November 21, 2011 (along with two deposition dates in the following two weeks when the expert(s) can be deposed, at Plaintiff's election).

(3) Discovery Deadline on class certification—December 16, 2011.

(4) Plaintiff's reply to Defendants' response shall be filed on January 13, 2012. Any supplemental or additional expert reports in conjunction with a reply brief shall be limited to responding to Defendants' expert(s).

(5) If a party wants oral argument or a mini-trial in reference to the class certification motion, it shall file a motion on January 20, 2012 with a response thereto by January 30, 2012. No reply.

(6) After the Court's ruling on the motion for class certification, a

supplemental case management conference shall be scheduled pursuant to a further report by the parties proposing a schedule for deadlines for merits issues.

Submitted this 29th day of March, 2011.

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